IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

SECOND APPEAL NO.766 OF 2006
Along with
Civil Application nos 1140,1411 of 2006 and 95/07

1. Anna Laxman Tupe alias
Yadav since deceased through
his L.Rs
1(1) Ganesh Anna Tupe and ors. Appellants.
Vs
Sitaram Laxman Yadav @ Tupe Respondent.

Mr Sandesh Deshpande, for the appellants.
Mr Umesh Malkapure, for the respondent.

CORAM : D.B.BHOSALE,J.
DATE : 22.01.2007.

PC:

1. Heard the learned counsel for the parties.

2. This second appeal by the original defendant nos. 1 and 2 challenges the concurrent judgments of the courts below. The respondent-plaintiff had filed a suit for mandatory injunction and possession of the northern portion of the house property. It appears that there was a partition in 1971. After partition, the plaintiff, who at the relevant time was working at Mumbai, constructed the suit house and allowed the defendants to occupy the same as gratuitous licensees. Though the appellants-defendants claim that the house property was constructed by all the four brothers out of the funds contributed by them, he has failed to bring

any material in support thereof and hence both the courts have concurrently held that the plaintiff has exclusive title over the suit property and the defendants were residing in the suit property as their licensees. Mr.Deshpande, learned counsel for the appellants, submitted that the evidence of the plaintiff deserves to be discarded since he did not enter into the witness box and the evidence was given by the son. In my opinion, that cannot be a substantial question of law since that would not have any effect on the merits of the case and for determination of the points involved therein. I am satisfied that the case involves no substantial question of law. Keeping that in view and considering the concurrent findings of facts and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this Court under section 100 of C.P.C to disturb the findings of fact, this appeal fails and is dismissed as such. As a consequences thereof, the civil applications stand disposed of.

3. At this stage, Mr.Deshpande, learned counsel for the appellants, prayed for some reasonable time to vacate the suit premises. Mr.Malkapure, learned counsel for the respondent-plaintiff, did not oppose the prayer and left it to the court. Considering the overall facts

and circumstances of the case, the appellants-defendants are allowed to vacate the suit premises by 31.12.2007 subject to their filing an usual undertaking in this court within a period of four weeks from today with an advance copy of the undertaking to the advocate for the respondent. If the appellants fail to file an undertaking as aforestated, it will be open for the respondent-plaintiff to execute the decree.

(D.B.BHOSALE,J.)